

Eric J. Bakewell (SBN 241529)  
EBakewell@willkie.com  
Benita S. Yu (SBN 329195)  
BYu@willkie.com  
Sam R. Santopoalo (SBN 334919)  
SSantopoalo@willkie.com  
Emily Horak (SBN 340115)  
EHorak@willkie.com

**WILLKIE FARR & GALLAGHER LLP**  
2029 Century Park East, Suite 2900  
Los Angeles, CA 90067  
Telephone: (310) 855-3000  
Facsimile: (310) 855-3099

*Attorneys for Defendant Intervet Inc.*

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION**

JERRY AVILES, individually and on behalf of all others similarly situated,

## Plaintiffs,

V.

INTERVET INC.

Defendant.

Case No. 2:23-cv-10825-RGK-BFM

Assigned to Hon. R. Gary Klausner

**DEFENDANT INTERVET INC.'S  
NOTICE OF MOTION AND  
MOTION TO DISMISS  
COMPLAINT FOR: (1) LACK OF  
PERSONAL JURISDICTION; AND  
(2) FAILURE TO STATE A CLAIM**

[Filed concurrently with Request for  
Judicial Notice; and [Proposed] Order]

### Hearing:

Date: March 25, 2024  
Time: 9:00 a.m.  
Courtroom: 850

Complaint served: November 28, 2023  
Action removed: December 27, 2023

**TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

2       **PLEASE TAKE NOTICE** that at 9:00 a.m. on March 25, 2024, or as soon  
3 thereafter as this matter may be heard, in the courtroom of the Honorable R. Gary  
4 Klausner of the United States District Court for the Central District of California, in  
5 Courtroom No. 850, Roybal Federal Building and U.S. Courthouse, 255 East Temple  
6 Street, Los Angeles, California 90012, Defendant Intervet Inc. (“Intervet”) will and  
7 hereby does move the Court for an Order dismissing Plaintiff Jerry Aviles’s  
8 Complaint with prejudice for: (1) lack of personal jurisdiction pursuant to Federal  
9 Rule of Civil Procedure 12(b)(2); and (2) failure to state a claim upon which relief can  
10 be granted pursuant to Federal Rule of Civil Procedure 12(b)(6).

11 This Motion is made following the conference of counsel pursuant to L.R. 7-3  
12 which took place on February 13, 2024.

13        This Motion is based on this Notice of Motion and Motion, the accompanying  
14 Memorandum of Points and Authorities, the Request for Judicial Notice,<sup>1</sup> the  
15 Proposed Order, the pleadings and records on file in this action, and such other  
16 evidence and argument as the Court may allow in connection with the hearing on this  
17 Motion.

18 || Dated: February 23, 2024

WILLKIE FARR & GALLAGHER LLP

19 By: /s/ Eric J. Bakewell  
20 Eric J. Bakewell

*Attorneys for Defendant  
Intervet Inc.*

23       <sup>1</sup> The Court may consider judicially noticed facts submitted in support of a motion to  
24 dismiss. *See Mullis v. U.S. Bankr. Ct. Dist. Nev.*, 828 F.2d 1385, 1388 (9th Cir. 1987)  
25 (ruling Court may consider judicially noticeable facts in support of a motion to  
26 dismiss). Courts may take judicial notice of a fact that “is not subject to reasonable  
27 dispute” because the fact is either “generally known within the trial court’s territorial  
28 jurisdiction” or “can be accurately and readily determined from sources whose  
accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b). Judicial notice of  
the documents and facts contained in Intervet’s concurrently filed request for judicial  
notice is proper as explained in Intervet’s request. *See, e.g., Byars v. Hot Topic, Inc.*,  
656 F. Supp. 3d 1051, 1060 (C.D. Cal. 2023) (taking judicial notice in support of  
motion to dismiss of “virtually identical lawsuits” filed by Aviles’s counsel).

## TABLE OF CONTENTS

	Page
PRELIMINARY STATEMENT .....	1
STATEMENT OF RELEVANT FACTS AND ALLEGATIONS .....	2
Aviles Brings A CIPA Claim Against Non-California Defendant Intervet Relating To Intervet's Pet Reunification Website (HomeAgain.com) .....	2
Aviles And His Counsel File Numerous Similar Copy-And-Paste Complaints Against Other Defendants .....	3
ARGUMENT .....	4
I. AVILES FAILS TO ALLEGE FACTS SUFFICIENT TO ESTABLISH PERSONAL JURISDICTION OVER INTERVET .....	5
A. The Court Lacks General Jurisdiction Over Intervet .....	5
B. The Court Lacks Specific Jurisdiction Over Intervet .....	6
II. AVILES FAILS TO STATE ANY CLAIM AGAINST INTERVET .....	9
A. Aviles's Generic, Copy-And-Paste Allegations Do Not State A Claim	10
1. Aviles's Copy-And-Paste Complaint Violates The <i>Twombly/Iqbal</i> Pleading Standard .....	10
2. Aviles Does Not Plead That Intervet Uses A Pen Register .....	12
B. Aviles, A "Tester" Plaintiff, Does Not Allege He Was Harmed By The Alleged Conduct .....	13
C. Aviles Fails To State A Claim For Punitive Damages .....	14
D. The Southern District Of California's <i>Greenley</i> Ruling Does Not Support Aviles's Invented Cause Of Action Against Intervet .....	16
CONCLUSION .....	17

## TABLE OF AUTHORITIES

	Page(s)
<b>Cases</b>	
<i>Ashcroft v. Iqbal</i> 556 U.S. 662 (2009).....	<i>passim</i>
<i>Bell Atl. Corp. v. Twombly</i> 550 U.S. 544 (2007).....	<i>passim</i>
<i>Bouncing Angels, Inc. v. Burlington Ins. Co.</i> 2017 WL 1294004 (C.D. Cal. March 20, 2017).....	15
<i>Briskin v. Shopify, Inc.</i> 87 F.4th 404 (9th Cir. 2023) .....	8
<i>Burger King Corp. v. Rudzewicz</i> 471 U.S. 462 (1985).....	9
<i>Byars v. Hot Topic, Inc.</i> 656 F. Supp. 3d 1051 (C.D. Cal. 2023).....	11, 14, 16
<i>Cybersell, Inc. v. Cybersell, Inc.</i> 130 F.3d 414 (9th Cir. 1997) .....	8
<i>Daghaly v. Bloomingdales.com, LLC</i> — F. Supp. 3d —, 2023 WL 6538382 (S.D. Cal. Oct. 6, 2023) .....	9
<i>Daimler AG v. Bauman</i> 571 U.S. 117 (2014).....	5, 6
<i>DFSB Kollective Co. v. Bourne</i> 897 F. Supp. 2d 871 (N.D. Cal. 2012).....	8
<i>Diaz v. Bank of Am. Home Loan Serv., L.P.</i> 2011 WL 13046844 (C.D. Cal. July 8, 2011) .....	15, 16
<i>Facebook, Inc. v. Pedersen</i> 868 F. Supp. 2d 953 (N.D. Cal. 2012).....	9
<i>Fed. Trade Comm'n v. Kochava, Inc.</i> — F. Supp. 3d —, 2023 WL 3249809 (D. Idaho May 4, 2023) .....	16

1	<i>Gonzales v. CarMax Auto Superstores, LLC</i>	
2	840 F.3d 644 (9th Cir. 2016) .....	14
3	<i>Goodyear Dunlop Tires Operations, S.A. v. Brown</i>	
4	564 U.S. 915 (2011).....	5
5	<i>Graham v. Noom, Inc.</i>	
6	533 F. Supp. 3d 823 (N.D. Cal. 2021).....	7
7	<i>Greenley v. Kochava, Inc.</i>	
8	— F. Supp. 3d —, 2023 WL 4833466 (S.D. Cal. July 27, 2023) .....	1, 16, 17
9	<i>Licea v. Caraway Home Inc.</i>	
10	655 F. Supp. 3d 954 (C.D. Cal. 2023).....	<i>passim</i>
11	<i>Martinez v. Aero Caribbean</i>	
12	764 F.3d 1062 (9th Cir. 2014) .....	6
13	<i>Massie v. Gen. Motors Co.</i>	
14	2021 WL 2142728 (E.D. Cal. May 26, 2021) .....	8
15	<i>Mavrix Photo, Inc. v. Brand Techs., Inc.</i>	
16	647 F.3d 1218 (9th Cir. 2011) .....	6
17	<i>McCalip v. TED Confs., LLC</i>	
18	690 F. App'x 944 (9th Cir. 2017).....	15
19	<i>Moss v. U.S. Secret Serv.</i>	
20	572 F.3d 962 (9th Cir. 2009) .....	12
21	<i>Panavision Int'l, L.P. v. Toeppen</i>	
22	141 F.3d 1316 (9th Cir. 1998) .....	6
23	<i>Pebble Beach Co. v. Caddy</i>	
24	453 F.3d 1151 (9th Cir. 2006) .....	8
25	<i>Saleh v. Nike, Inc.</i>	
26	562 F. Supp. 3d 503 (C.D. Cal. 2021).....	14
27	<i>Schwarzenegger v. Fred Martin Motor Co.</i>	
28	374 F.3d 797 (9th Cir. 2004) .....	5, 6, 8
	<i>Sher v. Johnson</i>	
	911 F.2d 1357 (9th Cir. 1990) .....	5

1 *Starr v. Baca*

2 652 F.3d 1202 (9th Cir. 2011) ..... 11

3 *Valenzuela v. Keurig Green Mountain, Inc.*

4 — F. Supp. 3d —, 2023 WL 3707181 (N.D. Cal. May 24, 2023) ..... 11

5 **Statutes**

6 Cal. Pen. Code § 637.2 ..... 13, 14, 15

7 Cal. Pen. Code § 638.50 ..... 12, 13

8 Cal. Pen. Code § 638.51 ..... 12, 13

9 **Other Authorities**

10 Fed. R. Civ. P. 8 ..... 10

11 Fed. R. Civ. P. 12 ..... 5, 9

## **MEMORANDUM OF POINTS AND AUTHORITIES**

## **PRELIMINARY STATEMENT**

Tester Plaintiff Jerry Aviles asserts a generic California Invasion of Privacy Act (“CIPA”) claim against out-of-state Defendant Intervet, Inc. (“Intervet”) relating to Intervet’s website HomeAgain.com. The Complaint contains no factual allegations about Intervet’s conduct and instead relies on general propositions unrelated to Intervet. Accordingly, Aviles’s Complaint should be dismissed pursuant to Federal Rule of Civil Procedure 12(b)(2) and 12(b)(6) because Aviles fails to allege facts sufficient to establish personal jurisdiction over Intervet and fails to state a claim under the pleading standards set forth in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009) and *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007).

Aviles brings a single cause of action under California Penal Code Section 638.51 for purported deployment of a pen register on the HomeAgain.com website. However, the Complaint does not contain plausible factual allegations to substantiate Aviles's accusations. For example, the Complaint does not identify what software Aviles believes Intervet is using in violation in CIPA. The Complaint does not allege the unidentified software meets the elements to constitute a pen register. And, the Complaint does not allege any facts about *Intervet's* specific conduct.

Aviles relies on an inapposite July 2023 motion to dismiss ruling from the United States District Court for the Southern District of California to invent a CIPA claim against Intervet. *See Greenley v. Kochava, Inc.*, — F. Supp. 3d —, 2023 WL 4833466 (S.D. Cal. July 27, 2023). *Greenley* involved a data broker: (1) using software to intercept location data; and (2) selling the intercepted data (including data about users' visits to sensitive locations). *See id.* at \*1. In contrast, Intervet and HomeAgain.com are not (and are not alleged to be) data brokers and instead help reunite pet owners with their lost furry friends. The out-of-district *Greenley* ruling Aviles clings to does not change his insufficient allegations even if that ruling was binding (it is not), factually similar (it is not), or correctly applied by Aviles (it is not).

1 Aviles's Complaint should be dismissed for at least two reasons:

2 *First*, Aviles fails to show the Court has personal jurisdiction over Intervet.  
 3 Aviles does not sufficiently allege there is general jurisdiction over Delaware-  
 4 incorporated Intervet with a principal place of business in New Jersey. Aviles also  
 5 does not sufficiently allege there is specific jurisdiction given the lack of any  
 6 allegations that Intervet's purported pet register targeted California.

7 *Second*, Aviles fails to state a claim. Aviles's Complaint is one of over 80  
 8 copy-and-paste complaints filed by Aviles's counsel within the past three months to  
 9 extort unsuspecting companies. Aviles fails to allege: (1) any conduct by Intervet; or  
 10 (2) facts sufficient to establish the CIPA elements or any right to punitive damages.

11 Aviles's Complaint does not allege facts sufficient for a CIPA claim against  
 12 Intervet to proceed in this Court. The allegations do not establish personal  
 13 jurisdiction. The rote recitation of CIPA's statutory language without alleging any  
 14 conduct by Intervet does not state a claim or any plausible theory of liability as  
 15 required by *Iqbal* and *Twombly*. Accordingly, the Complaint should be dismissed.

#### 16 **STATEMENT OF RELEVANT FACTS AND ALLEGATIONS**

##### 17 **Aviles Brings A CIPA Claim Against Non-California Defendant Intervet** 18 **Relating To Intervet's Pet Reunification Website (HomeAgain.com)**

19 On November 17, 2023, Aviles filed a class action complaint against Intervet in  
 20 Los Angeles Superior Court in which Aviles alleges Intervet violated California Penal  
 21 Code Section 638.51 through its HomeAgain.com website. *See generally* Compl.,  
 22 ECF No. 1-1. Aviles admits he is a "tester" plaintiff who sought out HomeAgain.com  
 23 to conjure a CIPA claim. *See id.* at ¶ 4. Intervet removed the action on December 27,  
 24 2023. *See* Notice of Removal, ECF No. 1.

25 Aviles's Complaint contains generic allegations having nothing to do with  
 26 Intervet. For example, the Complaint:

- 27 • Mentions Intervet only in the caption and Paragraph 5, Compl. ¶ 5;
- 28 • Includes three boilerplate paragraphs about jurisdiction, *id.* at ¶¶ 1-3;

- 1        •     Alleges Aviles visited HomeAgain.com “in 2023” without providing any
- 2 details about that visit, *id.* at 2:2-7;
- 3        •     Discusses a right to privacy without alleging Intervet violated that right,
- 4 *id.* at ¶¶ 6-8;
- 5        •     Claims “identity resolution” violates CIPA without any allegations about
- 6 Intervet engaging in “identity resolution,” *id.* at ¶¶ 9-14;
- 7        •     Does not identify what code or software constitutes the purported pen
- 8 register, *id.* at ¶ 16;
- 9        •     Quotes the “pen register” statute but does not allege the unidentified code
- 10 or software meets that definition, *id.* at ¶ 24; and
- 11        •     Recites CIPA’s elements without alleging specific conduct by Intervet,
- 12 *id.* at ¶¶ 24-29.

13        Aviles does not allege Intervet targeted any purported pen register at him or at  
 14 other Californians. *See generally* Compl. And, Intervet: (1) is incorporated in  
 15 Delaware, *see* Compl. at 1:14-15; and (2) maintains its principal place of business in  
 16 New Jersey, *see* Corporate Disclosure Statement 1:9-12, ECF No. 3.

17        **Aviles And His Counsel File Numerous Similar Copy-And-Paste**  
 18        **Complaints Against Other Defendants**

19        Aviles filed at least five other cases since March 2023 as a “tester” plaintiff.  
 20 *See* Req. for Judicial Notice, Exs. 2-6 (“RJN”). Four cases bring the same claim  
 21 Aviles brought against Intervet. *See* RJN, Exs. 2-5 (showing Aviles brought similar  
 22 claims in Los Angeles Superior Court against Brenntag North America, Inc. (Case No.  
 23 23STCV31527), Belk, Inc. (Case No. 23STCV31529), Colourpop Cosmetics, LLC  
 24 (Case No. 24STCV02899), and Alivecor, Inc. (Case No. 24STCV03764). Aviles  
 25 brought another case under the Consumer Legal Remedies Act on the basis he  
 26 allegedly used a testosterone booster supplement that falsely claimed it would boost  
 27 his “strength, stamina, energy, vitality, and male libido.” *See id.*, Ex. 6 (alleging in an  
 28 action captioned *Aviles v. Kingfisher Media, LLC* (Orange County Superior Court No.

1 30-2023-0131366-CU-MT-CXC) that the Court has personal jurisdiction over a male  
 2 supplement company because “Plaintiff believes that Defendant generates a minimum  
 3 of eight percent of its national website sales to Californians”).

4 Aviles’s counsel (Pacific Trial Attorneys APC) filed at least 80 complaints  
 5 against other defendants containing similar CIPA pen register claims under California  
 6 Penal Code Section 638.51. *See, e.g.*, RJN, Exs. 7-10, ¶¶ 11-90. These template  
 7 complaints are brought by “tester” plaintiffs and the actual defendants only appear on  
 8 the caption page. *Compare* RJN, Exs. 7-10, *with* Compl. The copy-and-paste nature  
 9 of the complaints extends to the jurisdiction and damages allegations. For example,  
 10 other complaints filed by Aviles’s counsel include the same allegations as the Intervet  
 11 Complaint that: (1) the Court has personal jurisdiction because “Plaintiff believes that  
 12 Defendant generates a minimum of eight percent of revenues from its website based  
 13 upon interactions with Californians,” *compare* RJN, Ex. 7 ¶ 2, *with* Compl. ¶ 2; and  
 14 (2) “Plaintiff suffered both an economic injury and an intangible injury to Plaintiff’s  
 15 dignity caused by the violation of Plaintiff’s right to privacy,” *compare* RJN, Ex. 7  
 16 ¶ 26, *with* Compl. ¶ 26.

17 The copy-and-paste nature of complaints like Aviles’s garnered attention from  
 18 another judge in this district. On February 9, 2023, Judge Bernal issued a published  
 19 decision dismissing a CIPA case brought by Aviles’s counsel and observed “the  
 20 central dynamic in this litigation, underscoring all of the deficiencies in the  
 21 Complaint” is “Plaintiff, and his counsel, . . . are serial litigants bringing numerous  
 22 ‘cookie cutter’ lawsuits under CIPA against various businesses that operate websites.”  
 23 *Licea v. Caraway Home Inc.*, 655 F. Supp. 3d 954, 964 (C.D. Cal. 2023).

## 24 ARGUMENT

25 Aviles’s Complaint should be dismissed with prejudice pursuant to Federal  
 26 Rule of Civil Procedure 12(b)(2) and 12(b)(6) given its fatal deficiencies. Aviles’s  
 27 allegations do not establish personal jurisdiction over Intervet – a Delaware  
 28 corporation with a New Jersey principal place of business. *See* Fed. R. Civ. P.

1 12(b)(2) (allowing motion to dismiss for lack of personal jurisdiction). Aviles also  
 2 fails to state a claim against Intervet. *See Fed. R. Civ. P. 12(b)(6)* (allowing motion to  
 3 dismiss where plaintiff fails “to state a claim upon which relief can be granted”).

4 **I. AVILES FAILS TO ALLEGE FACTS SUFFICIENT TO ESTABLISH**  
 5 **PERSONAL JURISDICTION OVER INTERVET**

6 Aviles’s nonexistent allegations of personal jurisdiction over Intervet require  
 7 dismissal of Aviles’s Complaint pursuant to Federal Rule of Civil Procedure 12(b)(2).  
 8 *See Sher v. Johnson*, 911 F.2d 1357, 1360 (9th Cir. 1990) (ruling due process requires  
 9 defendant to have minimum contacts with forum state and finding plaintiff failed to  
 10 establish Court has personal jurisdiction over all defendants).

11 Aviles cannot satisfy his burden to establish the Court has general or specific  
 12 personal jurisdiction over non-California Defendant Intervet. *See Goodyear Dunlop*  
 13 *Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011) (dismissing case for lack  
 14 of personal jurisdiction and establishing federal courts may assert either “general, all-  
 15 purpose jurisdiction” or specific jurisdiction to decide “issues deriving from, or  
 16 connected with, the very controversy that establishes jurisdiction”); *Schwarzenegger*  
 17 *v. Fred Martin Motor Co.*, 374 F.3d 797, 800 (9th Cir. 2004) (burdening plaintiff with  
 18 “demonstrating that jurisdiction is appropriate” in response to motion to dismiss and  
 19 dismissing claim because plaintiff failed to meet burden).

20 **A. The Court Lacks General Jurisdiction Over Intervet**

21 Aviles cannot establish the Court has general jurisdiction over Intervet because  
 22 Intervet’s activities in California are not alleged to be “so continuous and systematic  
 23 as to render them essentially at home in the forum state” of California. *Goodyear*,  
 24 *S.A.*, 564 U.S. at 919. A corporate defendant’s activity in the forum ordinarily gives  
 25 rise to general jurisdiction only if the defendant is incorporated or maintains its  
 26 principal place of business in the forum. *See Daimler AG v. Bauman*, 571 U.S. 117,  
 27 137 (2014) (establishing a corporation is subject to general jurisdiction in the forum of  
 28 its place of incorporation and principal place of business); *see also Martinez v. Aero*

1       Caribbean, 764 F.3d 1062, 1070 (9th Cir. 2014) (affirming “demanding nature of  
 2 standard” for general jurisdiction over corporation and adding “[o]nly in an  
 3 ‘exceptional case’ will general jurisdiction be available anywhere else”).

4       Aviles admits Intervet is not at home in California and, as such, there is no  
 5 general jurisdiction over Intervet. *See* Compl. ¶ 3. The Complaint pleads Intervet is  
 6 incorporated in Delaware (and not California) and acknowledges Intervet’s principal  
 7 place of business is in New Jersey (and not California). *See* Compl. 1:14-15, ¶ 3; ECF  
 8 No. 3; *Daimler AG*, 571 U.S. at 139 n.20 (stating a “corporation that operates in many  
 9 places can scarcely be deemed at home in all of them”); *Panavision Int’l, L.P. v.*  
 10 *Toeppen*, 141 F.3d 1316, 1320 (9th Cir. 1998) (affirming district court’s finding of no  
 11 general jurisdiction over defendant who was domiciled in Illinois and did not have  
 12 continuous or systematic activities in California). Aviles also does not otherwise  
 13 allege that Intervet’s purported operation of HomeAgain.com in “a forum other than  
 14 its formal place of incorporation or principal place of business” is “so substantial and  
 15 of such a nature as to render” Intervet “at home” in California. *See Daimler AG*, 571  
 16 U.S. at 138 n.19; *Mavrix Photo, Inc. v. Brand Techs., Inc.*, 647 F.3d 1218, 1226 (9th  
 17 Cir. 2011) (finding “[o]peration of an interactive website—even a ‘highly interactive’  
 18 website—does not confer general jurisdiction”).

19       **B.     The Court Lacks Specific Jurisdiction Over Intervet**

20       Aviles’s allegations do not establish specific jurisdiction over Intervet. The  
 21 Court has specific jurisdiction only if: (1) Intervet purposefully directed its purported  
 22 CIPA violations to California; and (2) the exercise of specific jurisdiction over  
 23 Intervet is reasonable. *See Schwarzenegger*, 374 F.3d at 802 (placing burden on  
 24 plaintiff to establish elements for specific jurisdiction and observing specific  
 25 jurisdiction usually arises in the context of tort claims).

26       Initially, Aviles cannot meet his burden to establish specific jurisdiction  
 27 because his jurisdictional allegations (or lack thereof) fail to meet his *Twombly/Iqbal*  
 28 pleading burden. Courts previously dismissed Aviles’s counsel’s copied-and-pasted

1 complaints with similar jurisdictional allegations for failure to meet plaintiff's  
 2 pleading burden to establish specific jurisdiction. *See Licea v. Caraway Home Inc.*,  
 3 655 F. Supp. 3d 954, 970 n.6 (C.D. Cal. 2023) (observing Aviles's counsel's copy-  
 4 and-paste jurisdictional facts are "the epitome of what *Twombly* and *Iqbal* sought to  
 5 prevent"). Reusing cookie-cutter jurisdictional allegations like those asserted against  
 6 the 80-plus defendants accused of using pen registers by Aviles or his counsel is  
 7 insufficient to satisfy Aviles's burden to establish *Intervet* purposefully directed its  
 8 conduct at issue at the forum state. *See Licea*, 655 F. Supp. 3d at 970 (dismissing  
 9 action filed by Aviles's counsel because plaintiff failed to meet personal jurisdiction  
 10 burden); *compare* R.J.N., Ex. 7 ¶ 2 (alleging personal jurisdiction over non-California  
 11 defendant because "Plaintiff believes that Defendant generates a minimum of eight  
 12 percent of revenues from its website based upon interactions with Californians"), *with*  
 13 Compl. ¶ 2, ("Plaintiff believes that Defendant generates a minimum of eight percent  
 14 of revenues from its website based upon interactions with Californians."). Aviles's  
 15 failure to allege how *Intervet* specifically targeted its purported pen register to  
 16 California (as opposed to generic template allegations made against all 80-plus  
 17 defendants) demonstrates there is no basis to assert specific jurisdiction over *Intervet*.

18 Aviles fails to meet his burden to establish that *Intervet* purposefully directed its  
 19 purported pen register to California. To wit:

20 • *A purported CIPA violation is insufficient to establish purposeful*  
 21 *direction of conduct to California.* Aviles claims the Court has personal jurisdiction  
 22 over *Intervet* because Aviles generally accuses *Intervet* of violating CIPA (Compl.  
 23 ¶ 2), but a purported CIPA violation alone without factual allegations showing  
 24 purposeful direction of the purported violation to California is insufficient to establish  
 25 specific jurisdiction. *See Graham v. Noom, Inc.*, 533 F. Supp. 3d 823, 838 (N.D. Cal.  
 26 2021) (finding no specific personal jurisdiction over website for CIPA claim where  
 27 website contracted with a vendor and all jurisdictional allegations were premised on  
 28 vendor's conduct); *Massie v. Gen. Motors Co.*, 2021 WL 2142728, at \*4 (E.D. Cal.

1 May 26, 2021) (finding claim that the installation of session replay software and the  
 2 purported interception of chat messages could not establish the conduct was expressly  
 3 aimed at California).

4       • *Alleged operation of a website without more does not establish*  
 5 *purposeful direction of conduct to California.* Aviles's allegation that the  
 6 HomeAgain.com website is accessible in California is insufficient to establish Intervet  
 7 purposefully targeted Californians with HomeAgain.com. *See* Compl. ¶ 2; *Briskin v.*  
 8 *Shopify, Inc.*, 87 F.4th 404, 419-20 (9th Cir. 2023) (dismissing claim for plaintiff's  
 9 failure to allege a "forum-specific focus"); *Pebble Beach Co. v. Caddy*, 453 F.3d  
 10 1151, 1158 (9th Cir. 2006) ("[A]n internet domain name and passive website alone are  
 11 not 'something more,' and, therefore, alone are not enough to subject a party to  
 12 jurisdiction."). An Intervet website that can be accessed from California does not  
 13 establish Intervet purposefully directed its purported CIPA activities at California.  
 14 *See Cybersell, Inc. v. Cybersell, Inc.*, 130 F.3d 414, 419 (9th Cir. 1997) (holding fact  
 15 "anyone, anywhere could access" defendant's website is insufficient to show  
 16 defendant purposefully directed its conduct to the forum state); *DFSB Kollective Co.*  
 17 *v. Bourne*, 897 F. Supp. 2d 871, 874-75 (N.D. Cal. 2012) (finding plaintiffs did not  
 18 "make a prima facie showing that defendant expressly aimed his conduct at  
 19 California" because plaintiffs failed to show defendant's website "anticipated, desired,  
 20 and achieved a substantial California viewer base").

21       • *Alleged revenue in California is insufficient to establish purposeful*  
 22 *direction where the revenue is unrelated to forum-specific conduct.* Aviles's  
 23 allegation that Intervet generates revenue in California through HomeAgain.com is  
 24 unrelated and not sufficient to establish Intervet purposefully targeted California by  
 25 the alleged CIPA conduct. *See* Compl. ¶ 2; *Schwarzenegger*, 374 F.3d at 802  
 26 (requiring claim to arise "out of or relate[] to the defendant's forum-related  
 27 activities"); *Facebook, Inc. v. Pedersen*, 868 F. Supp. 2d 953, 959 (N.D. Cal. 2012)  
 28 (holding plaintiff failed to show defendant aimed conduct at California because

1 plaintiff “did not establish that [defendant’s website] users in California were an  
 2 integral component of [defendant’s] business model and profitability”).

3 Aviles also fails to show that exercise of specific jurisdiction over non-  
 4 California defendant Intervet is reasonable. *See Burger King Corp. v. Rudzewicz*, 471  
 5 U.S. 462, 475 (1985) (ruling purposeful direction test “ensures that a defendant will  
 6 not be haled into a jurisdiction solely as a result of ‘random,’ ‘fortuitous,’ or  
 7 ‘attenuated’ contacts”). One Court dismissed a CIPA case related to purported use of  
 8 session replay technology because the CIPA allegations were insufficient to establish  
 9 it was reasonable to exercise specific jurisdiction over an out-of-state defendant. *See*  
 10 *Daghaly v. Bloomingdales.com, LLC*, — F. Supp. 3d —, 2023 WL 6538382, at \*3  
 11 (S.D. Cal. Oct. 6, 2023) (finding allegations regarding use of tool developed in  
 12 California insufficient to establish minimum contacts with California). None of  
 13 Aviles’s generic allegations – the same allegations asserted against 80-plus other  
 14 defendants – satisfy Aviles’s burden to establish that Intervet engaged sufficient to  
 15 establish specific jurisdiction. *See Licea*, 655 F. Supp. 3d at 970 (finding  
 16 jurisdictional allegations copied-and-pasted and used against numerous defendants are  
 17 insufficient to meet burden).

## 18 **II. AVILES FAILS TO STATE ANY CLAIM AGAINST INTERVET**

19 Aviles’s Complaint should be dismissed because Aviles does not plead any  
 20 claim against Intervet. *See Fed. R. Civ. P. 12(b)(6)*. Aviles’s Complaint must state  
 21 factual allegations sufficient “to raise a right to relief above the speculative level” and  
 22 plead “enough facts to state a claim to relief that is plausible on its face.” *See Bell Atl.*  
 23 *Corp. v. Twombly*, 550 U.S. 544, 555, 570 (2007); *see also Ashcroft v. Iqbal*, 556 U.S.  
 24 662, 678 (2009) (“[T]he pleading standard Rule 8 announces . . . demands more than  
 25 an unadorned, the-defendant-unlawfully-harmed-me accusation.”).

26 Aviles’s copy-and-paste CIPA claim with zero allegations about Intervet’s  
 27 allegedly wrongful conduct comes nowhere close to satisfying his pleading burden.  
 28 Aviles does not: (1) plausibly plead facts to establish a claim under California Penal

1 Code Section 638.51; (2) allege he was harmed by the alleged conduct; or (3) state  
 2 sufficient allegations to support his claims for punitive damages. Moreover, the  
 3 *Greenley v. Kochava, Inc.* out-of-district ruling relied on by Aviles does not support  
 4 his invented claim against Intervet.

5       **A. Aviles's Generic, Copy-And-Paste Allegations Do Not State A Claim**

6 Aviles's single cause of action should be dismissed for failure to state a claim  
 7 pursuant to Federal Rule of Civil Procedure 12(b)(6) because Aviles fails to meet the  
 8 Federal Rule of Civil Procedure 8 pleading standard and to plead the required  
 9 elements of his purported claim.

10      **1. Aviles's Copy-And-Paste Complaint Violates The**  
 11            ***Twombly/Iqbal* Pleading Standard**

12 Aviles's use of a generic pleading template without a single allegation about  
 13 *Intervet* blatantly violates federal pleading rules. Federal Rule of Civil Procedure  
 14 8(a)(2) requires “a short and plain statement of the claim showing that the pleader is  
 15 entitled to relief.” Fed. R. Civ. P. 8(a)(2). Two seminal United States Supreme Court  
 16 cases – *Twombly* and *Iqbal* – explain Rule 8’s requirement. The *Twombly* Court ruled  
 17 a plaintiff must provide more than labels, conclusions, and formulaic recitations of the  
 18 elements, or speculative factual allegations to survive a motion to dismiss. *See* 550  
 19 U.S. at 555 (finding further factual enhancement is required to meet plausibility  
 20 requirement). The *Iqbal* Court subsequently held that a formulaic recitation of the  
 21 elements of a claim are not enough to survive a motion to dismiss. 556 U.S. at 678  
 22 (holding complaint cannot survive if it offers no more than “labels and conclusions”  
 23 or “a formulaic recitation of the elements of a cause of action”).

24 Aviles fails to satisfy the Rule 8 standards for pleading because the template  
 25 Complaint does not contain any allegations about Intervet (as opposed to generic  
 26 propositions). Aviles relies on a template complaint that Aviles and his counsel filed  
 27 against over 80 other defendants. *See Valenzuela v. Keurig Green Mountain, Inc.*, —  
 28 F. Supp. 3d —, 2023 WL 3707181, at \*5 (N.D. Cal. May 24, 2023) (finding

speculative recitation of elements of CIPA claim fails to meet *Twombly* pleading standard). Judge Bernal reviewed a similar complaint filed by Aviles's counsel and found "if a litigant pleads at such a high level of generality that it is possible to copy and paste a complaint word-for-word against a new defendant . . . , then almost by definition he is pleading without the factual specificity necessary to state a claim for relief." *Byars v. Hot Topic, Inc.*, 656 F. Supp. 3d 1051, 1060-61 (C.D. Cal. 2023). Aviles's Complaint is doomed to the same result because Aviles cannot state a claim when his complaint lacks any allegations specific to Intervet. *See Licea*, 655 F. Supp. 3d at 970 n.6 (cautioning "[i]f Plaintiff chooses to file an amended complaint, he should take the opportunity to plead specific facts as to what [defendant] and an (unnamed) third party has done, not just generic allegations copied and pasted from other lawsuits"). Aviles cannot rely on generic propositions made against copious other defendants to avoid his foundational pleading obligations to state a claim against *Intervet* based on *Intervet*'s specific purported conduct. *See Iqbal*, 556 U.S. at 678 (providing "claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged").

Aviles also fails to satisfy his pleading burden as articulated in *Twombly* and *Iqbal* because Aviles regurgitates the legal elements of a pen register claim and "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements" are not enough. *Iqbal*, 556 U.S. at 678; *Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011) (holding allegations in complaint "may not simply recite the elements of a cause of action, but must contain sufficient allegations of underlying facts to give fair notice and . . . enable the opposing party to defend itself effectively," and "allegations that are taken as true must plausibly suggest an entitlement to relief"). For example, California Penal Code Section 638.51 provides that "a person may not install or use a pen register . . . without first obtaining a court order." Cal. Pen. Code § 638.51. Aviles then claims Intervet "knowingly and

1 criminally deployed pen register software to access Plaintiff's device, install tracking  
 2 software, and obtain Plaintiff's IP address." Compl. ¶ 25. Aviles does not provide  
 3 any factual allegations to plausibly support his accusation and instead parrots the text  
 4 of the statute. *See generally* Compl.; *Moss v. U.S. Secret Serv.*, 572 F.3d 962, 970  
 5 (9th Cir. 2009) (finding "bald allegation . . . standing alone, is conclusory and is  
 6 therefore not entitled to an assumption of truth"). Aviles repeats the legal standard for  
 7 each additional element of the claim without providing any factual allegations to  
 8 convert the claim from a bald accusation to a plausible cause of action. *See Twombly*,  
 9 550 U.S. at 546 (dismissing claim because "without further factual enhancement it  
 10 stops short of the line between possibility and plausibility"). Aviles's Complaint "is  
 11 the epitome of what *Twombly* and *Iqbal* sought to prevent" and should be dismissed.  
 12 *See Licea*, 655 F. Supp. 3d at 970.

13 **2. Aviles Does Not Plead That Intervet Uses A Pen Register**

14 Aviles improperly refuses to identify in his Complaint what software or code he  
 15 believes Intervet allegedly used in violation of the pen register provision of CIPA.  
 16 *See Compl. ¶ 16* ("In response to an appropriate request, Plaintiff will share with  
 17 Defendant proof of the deployment and activity of the pen register."). The  
 18 Complaint's failure to provide the critical factual allegation of what code purportedly  
 19 violates CIPA warrants dismissal for failure to provide the notice required under  
 20 *Twombly*. *See Bell Atl. Corp.*, 550 U.S. at 555 (requiring pleading to give defendant  
 21 fair notice of the claim).

22 As a result, Aviles also fails to plead the required element that the code  
 23 allegedly used on the HomeAgain.com website constitutes a "pen register." *See*  
 24 *generally* Compl. Aviles's CIPA claim requires (among other things) allegations that  
 25 Intervet: (1) used a pen register; (2) without a court order. *See* Cal. Pen. Code  
 26 § 638.50(b) (defining "pen register"); Cal. Pen. Code § 638.51(a) (stating "a person  
 27 may not install or use a pen register . . . without first obtaining a court order").

1 Aviles parrots the generic definition of “pen register” as set forth in California  
 2 Penal Code Section 638.50 but fails to allege the unidentified software Intervet  
 3 allegedly deployed meets the statutory definition of a pen register. *See Iqbal*, 556  
 4 U.S. at 678 (requiring complaint to state more than “a formulaic recitation of the  
 5 elements of a cause of action”); *compare* Compl. ¶ 16 (alleging Intervet “deployed  
 6 ‘pen register’ software” that “decode[s] routing, addressing, and signaling information  
 7 to obtain the IP address of each visitor”), *with* Cal. Penal Code § 638.50 (defining  
 8 “pen register” as “a device or process that . . . decodes dialing, routing, addressing, or  
 9 signaling information”). Aviles’s discussion regarding “pen register software” in the  
 10 abstract does not plead (much less plausibly plead) the necessary element that the  
 11 technology alleged constitutes a pen register. *See* Compl. ¶¶ 9-15; *see also* *Iqbal*, 556  
 12 U.S. at 678 (providing a complaint must offer more than “labels and conclusions”).

13 **B. Aviles, A “Tester” Plaintiff, Does Not Allege He Was Harmed By**  
 14 **The Alleged Conduct**

15 Aviles’s CIPA claim must be dismissed because Aviles does not allege facts  
 16 showing Intervet’s purported conduct caused him any injury. *See generally* Compl.  
 17 Aviles’s sole assertion referencing a vague purported injury is inadequate because:  
 18 (1) it is a conclusory statement and not a *factual* allegation; and (2) Aviles does not  
 19 allege Intervet caused the purported injury. *See* Compl. ¶ 26 (“Plaintiff suffered both  
 20 an economic injury and an intangible injury to Plaintiff’s dignity caused by the  
 21 violation of Plaintiff’s right to privacy.”); *Iqbal*, 556 U.S. at 678 (providing a  
 22 complaint stating no “more than an unadorned, the-defendant-unlawfully-harmed-me  
 23 accusation” cannot withstand a motion to dismiss).

24 CIPA requires Aviles to allege facts showing Intervet’s purported CIPA  
 25 violation caused an injury to Aviles. *See* Cal. Pen. Code § 637.2(a) (establishing  
 26 requirements for civil CIPA claim). California Penal Code Section 637.2(a) permits a  
 27 “person who has been *injured*” by a CIPA violation to “bring an action against the  
 28 person who committed the violation.” *Id.* (emphasis added). The plain language of

1 CIPA’s private action provision – that “any person who has been *injured by* a  
 2 violation of this chapter may bring an action against the person who committed the  
 3 violation” – precludes a claim based on strict liability. *See* Cal. Pen. Code § 637.2  
 4 (emphasis added); *see also* *Gonzales v. CarMax Auto Superstores, LLC*, 840 F.3d 644,  
 5 650 (9th Cir. 2016) (noting a court “first looks to the language of the statute, giving  
 6 effect to the words’ plain meaning” and if “the language is unambiguous, the plain  
 7 meaning controls” when interpreting statutes under California law). Aviles must  
 8 allege injury even if he is not required to allege actual damages. *See Saleh v. Nike,*  
 9 *Inc.*, 562 F. Supp. 3d 503, 522 (C.D. Cal. 2021) (finding complaint deficient because  
 10 plaintiff failed to allege injury from software that recorded keystrokes on website).

11 Aviles fails to allege the necessary element of injury and therefore fails to state  
 12 a CIPA claim. *See, e.g.*, Compl. ¶ 26 (“Plaintiff suffered both an economic injury and  
 13 an intangible injury to Plaintiff’s dignity caused by the violation of Plaintiff’s right to  
 14 privacy.”); *see also Twombly*, 550 U.S. at 555 (requiring more than a “formulaic  
 15 recitation of elements” to satisfy pleading requirements). Aviles only recites the legal  
 16 standard without including a single fact describing the injury he suffered because of  
 17 Intervet’s purported use of a pen register. *See generally* Compl. Aviles’s barebones  
 18 recitation fails to meet his pleading burden because the other 80-plus pending  
 19 complaints contain similar barebones recitations of injury. *See Byars*, 656 F. Supp. 3d  
 20 at 1060-61 (finding plaintiff fails to meet *Twombly* pleading standard if plaintiff  
 21 “pleads at such a high level of generality that it is possible to copy and paste a  
 22 complaint word-for-word against a new defendant”); RJN, Exs. 7-10. Aviles also fails  
 23 to provide a plausible explanation for how he could suffer injury given he is a “tester”  
 24 plaintiff who intentionally sought out HomeAgain.com to look for an alleged CIPA  
 25 violation. *See* Compl. ¶ 4.

26 **C. Aviles Fails To State A Claim For Punitive Damages**

27 Aviles’s punitive damages request should be dismissed because it fails to meet  
 28 the pleading standards articulated in *Twombly* and *Iqbal*. *See Bouncing Angels, Inc. v.*

1 *Burlington Ins. Co.*, 2017 WL 1294004, at \*4 (C.D. Cal. March 20, 2017) (dismissing  
 2 plaintiff's claim for punitive damages where allegations of malice, oppression, or  
 3 fraudulent intent lacked sufficient factual detail to "satisfy the requirements of  
 4 *Twombly* and *Iqbal*"); *see also McCalip v. TED Confs., LLC*, 690 F. App'x 944, 945  
 5 (9th Cir. 2017) (affirming district court's ruling to dismiss punitive damages claim for  
 6 failure to plead facts demonstrating malice, oppression, or fraud).

7 Aviles's claim for punitive damages under California Civil Code Section 3294  
 8 contains factual allegations about any Intervet conduct (much less conduct that would  
 9 support an award of punitive damages). *Compare* Compl. ¶ 27 ("By knowingly  
 10 violating a criminal statute and illegally accessing Plaintiff's device to install tracking  
 11 software, Defendant acted with oppression and malice. As such, Defendant is liable  
 12 for punitive damages pursuant to Civil Code section 3294."), *with* Cal. Civ. Code  
 13 § 3294 (establishing "where it is proven by clear and convincing evidence that the  
 14 defendant has been guilty of oppression, fraud, or malice, the plaintiff . . . may recover  
 15 damages for the sake of example and by way of punishing the defendant"). Aviles  
 16 cannot recite the elements of a claim for punitive damages to survive a motion to  
 17 dismiss. *See Diaz v. Bank of Am. Home Loan Serv., L.P.*, 2011 WL 13046844, at \*5  
 18 (C.D. Cal. July 8, 2011) (dismissing punitive damages from complaint and ruling  
 19 "[t]he inclusion of statutory language in a Complaint without alleging corresponding  
 20 facts cannot lift an insufficiently pleaded complaint over the *Iqbal* and *Twombly*  
 21 hurdles").

22 Aviles's claim for punitive damages fails to clear the *Twombly/Iqbal* pleading  
 23 threshold because the Complaint does not allege facts to establish Intervet engaged in  
 24 malicious conduct. *Compare* Compl. ¶ 27, *with* R.J.N., Exs. 7-10 (showing other cases  
 25 make similar punitive damages claims and the Complaint has no allegations about  
 26 Intervet specifically). The Complaint does not allege sufficient facts to plead the  
 27 elements for punitive damages against *Intervet* when the same allegations are made  
 28 against more than 80 other defendants. *See Byars*, 656 F. Supp. 3d at 1060-61

1 (finding copy-and-paste complaints are “almost by definition . . . without the factual  
 2 specificity necessary to state a claim for relief”).

3       **D. The Southern District Of California’s *Greenley* Ruling Does Not**  
 4       **Support Aviles’s Invented Cause Of Action Against Intervet**

5 Aviles relies on an out-of-district motion to dismiss ruling that allowed a sliver  
 6 of that plaintiff’s privacy claims relating to whether a data broker’s practices  
 7 constitute a pen register to move forward. *See* Compl. ¶ 15, 17 (citing *Greenley v.*  
 8 *Kochava, Inc.*, — F. Supp. 3d —, 2023 WL 4833466 (S.D. Cal. July 27, 2023)). But,  
 9 that out-of-district, factually distinct ruling neither supports nor saves Aviles’s claim.

10 The background in *Greenley* is far different than this case. In *Greenley*,  
 11 plaintiff filed a detailed 54-page complaint with 239 paragraphs of factual allegations  
 12 against a data-broker defendant (as opposed to Aviles’s sparse cookie-cutter  
 13 Complaint against a company that is obviously not a data broker). *Greenley*, 2023  
 14 WL 4833466, at \*1; RJN, Ex. 1. Plaintiff alleged Kochava developed and provided  
 15 software for app developers in exchange for app developers allowing Kochava to  
 16 intercept and sell app users’ location data. *See* *Greenley*, 2023 WL 4833466, at \*1.  
 17 The suit arose after the Federal Trade Commission pursued claims against Kochava  
 18 for allegedly selling data about consumers’ visits to “sensitive locations” like health  
 19 care facilities. *See id.* at \*2; *Fed. Trade Comm’n v. Kochava, Inc.*, — F. Supp. 3d —,  
 20 2023 WL 3249809, at \*9 (D. Idaho May 4, 2023) (dismissing FTC’s complaint  
 21 against Kochava for failure to plead harm).

22 The *Greenley* ruling did not find plaintiff’s claims have merit or create a new  
 23 theory of liability under California law. *See* *Greenley*, 2023 WL 4833466, at \*17-19.  
 24 Instead, that judge: (1) granted Kochava’s motion to dismiss as to many of the  
 25 asserted claims; and (2) denied Kochava’s motion to dismiss as to certain claims  
 26 including a claim under California Penal Code Section 638.51. *See id.* at \*15. The  
 27 *Greenley* judge noted the 239-paragraph complaint with extensive factual allegations  
 28

1 against Kochava was “enough to survive the Motion to Dismiss” for certain claims.

2 *Id.* at \*16. No other courts have adopted the *Greenley* holding.

3 *Greenley* is inapposite and does not support a CIPA claim against Intervet.  
 4 Aviles’s cut-and-paste Complaint does not allege Intervet is a data broker and claims  
 5 Intervet is in the unrelated business of “sell[ing] pet services.” *Compare* Compl. ¶ 5  
 6 (claiming Intervet is a pet services company), *with Greenley*, 2023 WL 4833466, at \*1  
 7 (describing Kochava as a data broker). Aviles does not allege Intervet is performing  
 8 identity resolution, developing pen register code, or selling consumer data. *Compare*  
 9 Compl. (containing no allegations that pet services company Intervet is data business),  
 10 *with Greenley*, 2023 WL 4833466, at \*1 (explaining Kochava’s business is creating  
 11 software for app developers). Nor would such a claim be plausible given Intervet is a  
 12 pet company and HomeAgain.com is a website for pet reunification services. *See*  
 13 Compl. ¶ 5. Additionally, Aviles’s template Complaint is vastly different from the  
 14 54-page, 239-paragraph complaint in *Greenley*. *Compare* Compl. (providing generic  
 15 allegations without any specific allegations against Intervet), *with* RJN, Ex. 1.  
 16 *Greenley* does not stand for the proposition that there is a viable cause of action under  
 17 California Penal Code Section 638.51 against a pet services company that is not in the  
 18 software or data business, and citing to *Greenley* in a complaint cannot create a new  
 19 cause of action where none otherwise exists.

20 **CONCLUSION**

21 For the foregoing reasons, Intervet respectfully requests the Court enter an Order  
 22 dismissing Aviles’s Complaint with prejudice.

23 Dated: February 23, 2024

**WILLKIE FARR & GALLAGHER LLP**

24 By: /s/ Eric J. Bakewell  
 25 Eric J. Bakewell  
 26 Benita S. Yu  
 Sam R. Santopoalo  
 Emily Horak

27 *Attorneys for Defendant Intervet Inc.*

## **WORD COUNT CERTIFICATION**

The undersigned, counsel of record for Intervet Inc., certifies that this brief contains 5,545 words, which complies with the word limit set by court order dated January 9, 2024 (*see* Standing Order, ECF No. 11).

Dated: February 23, 2024

# WILLKIE FARR & GALLAGHER LLP

By: /s/ Eric J. Bakewell  
Eric J. Bakewell

*Attorneys for Defendant Intervet Inc.*

**WILLKIE FARR & GALLAGHER LLP**  
2029 CENTURY PARK EAST, SUITE 2900  
LOS ANGELES, CA 90067  
310 855 3000